for such services. It is almost uniformly held that such fees are not assessable as costs against the county. *Arkansas County* v. *Freeman, et al.*, 31 Ark. 266; *People* v. *Supervisors*, 28 How. Pr. 22. The duty of defending indigents in courts of justice is assumed by an attorney as one of his professional duties. COOLEY, CONST'L LIM., Ed. 5, 408; *Rowe* v. *Yuba County*, 17 Cal. 62; *Wayne Co.* v. *Waller*, 90 Pa. St. 99, 35 Am. Rep. 636. It is also a duty incumbent upon him as an officer of the court. He must bear the burdens of being a court officer as well as enjoy the privileges connected with such office. *Presby* v. *Klickitat County*, 5 Wash. 329, 31 Pac. 876; *Wayne County* v. *Waller, supra.* Moreover, a board of commissioners can allow only such claims against the county as are authorized by law. *Dismukes* v. *Noxubee County Supervisors*, 58 Miss. 612, 38 Am. Rep. 339. 2 DILLON, MUN. CORP., Ed. 5, § 793-795. Claims for services such as those in the principal case are the proper subject for legislative enactment, and not for judicial determination. *People* v. *Supervisors of Erie County*, 1 Sheld. 517. However, such claims upon the public treasury may be by necessary implication from statutory authority, though not granted by express terms. *Wayne County* v. *Waller, supra; Hyatt* v. *Hamilton County*, 121 Ia. 292, 96 N. W. 855, 63 L. R. A. 614, 100 Am. St. Rep. 354. It is at this point that the two lines of authority divide. Three states, Iowa, Indiana and Wisconsin, have held that the county can be held liable for services under assignment by the court without express statutory authority for such compensation. They hold that the county may be liable by implication for some expenses not directly specified by statute, and that this is such an expense. *Hyatt* v. *Hamilton County, supra; Hall* v. *Washington County*, 2 G. Greene 473. Though the county commissioners could not themselves have contracted for such services, the county is liable for them when performed under a proper appointment of the county court. *Board of Montgomery Co. Com.* v. *Courtney*, 105 Ind. 311, 4 N. E. 896; *Webb* v. *Baird*, 6 Ind. 13; *Carpenter* v. *County of Dane*, 9 Wis. 274. The Wisconsin court has gone so far in this direction as to hold that a statute prohibiting the collection of fees from a county for the defense of indigent persons is void. *Dane County* v. *Smith*, 13 Wis. 585, 80 Am. Dec. 754. The opinion in the principal case furnishes an exhaustive review of the arguments and authorities on both sides of this question.

MUNICIPAL CORPORATIONS—ORDINANCES—OFFICERS DE FACTO.—The prosecutor sought by this writ to test the validity of an ordinance abolishing an office held by him. One member of the council, whose vote was essential to make a majority in passing the ordinance was at the time a non-resident of the ward he was representing in council. The city charter provided that such non-residence constituted a vacancy, to supply which the council should call a special election in the ward. No action had been taken by the council to declare a vacancy or to order a special election. *Held,* the ordinance so passed was valid, the member being a *de facto* officer. *McAvoy* v. *Inhabitants of Trenton* (N. J. 1911) 80 Atl. 950.

The theory of the case is that the ordinance was *of interest to the public,* and though a vacancy might have been declared no action was taken by the

council, and the councilman, having been duly elected and qualified, recognized as a member of and participating in all council proceedings, was an officer *de facto* and his acts were valid. *Oliver* v. *Jersey City,* 63 N. J. L. 634, 48 L. R. A. 412. A city ordinance cannot be assailed on the ground that the council which passed it was not legally constituted. *Susanville* v. *Long,* 144 Cal. 362; *Pence* v. *City of Frankfort,* 101 Ky. 534; *Woodruff* v. *N. Y. & N. E. R. Co.,* 59 Conn. 63; *Perkins* v. *Fielding,* 119 Mo. 149; *Magneau* v. *Freemont,* 30 Neb. 843, 27 Am. St. Rep. 436. The acts of a *de facto* officer are valid as to the public and third persons who may be interested, though invalid as to himself. *Wilcox* v. *Smith,* 5 Wend. 234; *Fowler* v. *Bebee,* 9 Mass. 231; *Green* v. *Burke,* 23 Wend. 490. The early cases held that in order to constitute a person an officer *de facto* he must occupy the office under some color or claim of title. *McCall* v. *Byram,* 6 Conn. 428; *McInstry* v. *Tanner,* 9 Johns. 135; *Douglas* v. *Wickmire,* 19 Conn. 492; *Cocke* v. *Halsey,* 16 Pet. 71. But these decisions have been qualified by holdings that the reasons of public policy upon which the acts of an officer *de facto* are held valid may apply even to the case of an intruder and usurper. *Wilcox* v. *Smith,* 5 Wend. 231; *People* v. *Kane,* 23 Wend. 414; *Petersilea* v. *Stone,* 119 Mass. 465; *Wilson* v. *King,* 3 Litt. 457; *State* v. *Carroll,* 38 Conn. 449, 9 Am. Rep. 409. The leading case of *State* v. *Carroll, supra,* states that "one who exercises the duties of an office under color of an election or appointment by or pursuant to a public, unconstitutional law before the same is adjudged such is an officer *de facto.*" This, says Justice FIELD, "refers not to the constitutionality of the act creating the office, but to the unconstitutionality of the act by which the officer is appointed to an office legally existing." *Norton* v. *Shelby County,* 118 U. S. 425; *Cole* v. *Black River Falls,* 57 Wis. 110. *Contra*: that there may be a *de facto* officer though no *de jure* office exists, criticising Judge FIELD'S qualification of the rule. *Burt* v. *Winona Ry. Co.,* 31 Minn. 472; *State* v. *Gardner,* 54 Ohio St. 24; *Donough* v. *Dewey,* 82 Mich. 309; *Lang* v. *Bayonne,* 74 N. J. L. 455; *State* v. *Bailey,* 106 Minn. 138; *State* v. *Poulin,* 105 Me. 224; and see *In re Ah Lee,* 5 Fed. 899; *Speer* v. *Kearney County,* 88 Fed. 749. This rule extends to all officers, judicial, executive or ministerial, *People* v. *White,* 24 Wend. 527; *Sheehan's Case,* 122 Mass. 446; to inferior as well as superior officers, *State* v. *Carroll,* 38 Conn. 449; *Mallett* v. *U. S. G. & S. M. Co.,* 1 Nev. 156; there cannot be at the same time an officer *de jure* and an officer *de facto* in possession of the same office, *Boardman* v. *Halliday,* 10 Paige 232; *Conover* v. *Devlin,* 15 How. Pr. 479; nor can there be two *de facto* officers in possession of the same office at the same time, *Conover* v. *Devlin, supra; State* v. *Blossom,* 19 Nev. 312.

MUNICIPAL ORDINANCES—HAWKERS AND PEDDLERS—DEFINITION OF.—An action was brought by a village against the defendants for the violation of an ordinance requiring a license tax to be paid "by each hawker of goods by retail, by samples, or by taking orders or otherwise." Defendants, trading under the name of Moyune Tea Co., had a place of business in a neighboring city, and periodically sent an agent into the plaintiff village to deliver goods previously ordered, and at the same time to take orders for subsequent de-